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v. *Colonial Gold Co.*, 93 Mass. 283. The opinion declares, however, that in the absence of statutory authority a suit in equity could not be maintained for the collection of taxes assessed upon property. See *Heine v. The Levee Commissioners*, 19 Wall. (U. S.) 655. Though such a proposition seems to have the support of the authorities, it is submitted that upon principle exception may be taken. It is conceded that when there exists a power to tax, incidental to power to incur the debt, a duty to tax, dependent upon a valid debt, and a refusal by the proper official to enforce the tax, mandamus will lie to make that officer perform his ministerial duty. *Thompson v. Allen County*, 115 U. S. 550. If, however, the official resigns before he can be served with the writ, it seems to follow that we have a clear case for equity jurisdiction. There is no adequate and complete remedy at law. *Rees v. City of Watertown*, 19 Wall. (U. S.) 107. So on well recognized theories it seems that equity, even without express statutory authority, should see that the recalcitrant officer's duty is done, ordering its own official to levy and collect the taxes named, in conformity with the laws of the state for the collection of such taxes. *Welch v. Ste. Genevieve*, 1 Dill. (U. S.) 130. See *Supervisors v. Rogers*, 7 Wall. (U. S.) 175.

TAXATION — PARTICULAR FORMS OF TAXATION — APPLICATION OF INHERITANCE TAX TO EXECUTION BY FOREIGN WILL OF POWER CREATED IN DOMESTIC WILL. — A, by a New York will, gave B a power of appointment over a trust fund. B, in a New Jersey will, exercised the power in favor of C. Both B and C came within the one per cent class of the New York Transfer Tax Act of 1897. Under the law existing when A died they would have been exempt. *Held*, that C takes the fund free from the New York transfer tax. *In re Kissel's Estate*, 121 N. Y. Supp. 1088 (Sur. Ct.).

Estates created by the execution of a power of appointment are as a general rule treated as if created by the instrument raising the power. Thus a suspension of alienation in the second instrument is invalid if such would have been its effect annexed to the estates in the first instrument. *Genet v. Hunt*, 113 N. Y. 158. And the validity of the exercise of a power is tested by the law of the jurisdiction in which it was created. *Colting v. De Sartiges*, 17 R. I. 668. But for the purposes of taxation, statutes both in England and in this country have treated the estates of the appointees as derived from the donee of the power. *Attorney-General v. Upton*, L. R. 1 Exch. 224; *Appeal of Seibert*, 110 Pa. St. 329; N. Y. TAX LAW, § 220, par. 5. The tax upon the execution of the power is not a tax upon property but upon the exercise of a privilege. *Chanler v. Kelsey*, 205 U. S. 466. There appears no reason why the estate of the appointee should not be taxed under both instruments since both are necessary to his title, but such is not the interpretation put upon the statutes. *Vandiest v. Fynmore*, 6 Sim. 570; *Matter of Howe*, 86 N. Y. App. Div. 286. In the principal case, since the creation of the power was not taxable and since its execution was effected under a New Jersey instrument, the decision seems sound.

TELEGRAPH AND TELEPHONE COMPANIES — STATUS OF COMPANIES AS ENGAGED IN PUBLIC EMPLOYMENT — OBLIGATION TO SERVE ALL AT REASONABLE RATES. — *Held*, that a telegraph company is entitled to service from a telephone company at the same rates as other business customers. *Postal Telegraph-Cable Co. of Tennessee v. Cumberland Telephone & Telegraph Co.*, 43 N. Y. L. J. 1065 (U. S. Circ. Ct., Mid. D. Tenn., March 31, 1910).

On a general theory that the value of service to the consumer is a factor in the determination of rates, the defendant sought to justify the differentiation in the principal case. Recent federal authority, indeed, allows a carrier in rating different commodities to charge most heavily those which can best afford to pay. *Interstate Commerce Commission v. Chicago Great Western Railway Co.*, 141 Fed. 1003. But, as another circuit had recognized, where the cost of carrying different